



CASE NO. 04-10258NG

DEFENDANT'S PROPOSED
PRELIMINARY INSTRUCTIONS TO
THE JURY

1. This is a claim of negligence against a physician commonly called a medical malpractice claim. The burden of proof is upon the plaintiff to show affirmatively the right to recover any damages from the defendant, by proving that a defendant departed from the standard of care required of a physician practicing in his specialty, and that damage to the plaintiff resulted from such departure.

2. This is a civil case. This burden of proof, in a civil case, requires the plaintiff to establish by a fair preponderance of the credible evidence those elements of his claim which I shall later point out to you are necessary in order to obtain any recovery. This is different from the “beyond a reasonable doubt” burden in a criminal case.

3. A physician's duty is to use the reasonable degree of learning and skill and experience which is ordinarily possessed by others of his profession, and if the defendant is a specialist, by others in his specialty, taking into account the advances in the profession at the time that the services were rendered. In case of doubt, he is to use his best judgment consistent with acceptable medical practice as to the treatment to be given to produce a good result.

4. A physician is allowed a range in the reasonable exercise of his professional judgment. He is not negligent so long as he employs such judgment and so long as that

judgment does not represent a departure from the requirements of accepted medical practice obligates him to do, or in doing something he should not do, measured by the standards of the physician practicing in that specialty.

5. It is the obligation of the plaintiff to show a causal relationship between any alleged failure of a doctor and the ensuing injury. This relationship, the causal relationship in cases of this nature, requires expert medical testimony and you as the finder of fact are not entitled and are not permitted to decide vital portions of it by way of conjecture, surmise or speculation.

6. The plaintiff has the burden of proving by the preponderance of the credible evidence not only that a defendant was negligent, but that the defendant's negligence was a substantial contributory cause of the plaintiff's damages.

7. You the jury are the exclusive judges of the facts in this case. Thus, with respect to each witness that is presented to you, you are entitled to accept everything a witness says, accept nothing that a witness says, or accept some of a witness' testimony and reject other portions of the testimony. What evidence is accepted is entirely up to you. As you engage in this process when each witness and each item of evidence has been presented to you, at the close of the case, you will then be in a position to determine that which you find to be the actual facts in this matter.

8. In this regard, you may hear testimony by opinion witnesses in this case. If in the opinion of the Court certain knowledge is beyond the common knowledge of lay people, the Court will permit someone practicing in a particular field to testify to certain conclusions and opinions. You are in no way bound by the opinions and conclusions of any expert witness. You should view such conclusions as any other testimony in the case, and you must decide whether to

accept such testimony, and the extent to which it should be considered to be of assistance to you in arriving at your conclusion.

Respectfully submitted,

s/s Charles P. Reidy, III
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DATED: